

GUIDELINES ON FOOD AT MEETINGS AND CONFERENCES

The purpose of this paper is to provide general guidance for food or light refreshments to be provided by NOAA at meetings and conferences and paid for from NOAA's appropriations.

What Regulations are applicable?

1. When on Travel

The Federal Travel Regulation issued by the General Services Administration (GSA), Department of Commerce Travel Regulation, and the NOAA Travel Regulation govern what can be paid for personnel in travel status, including attendance at conferences. These rules apply to invitational travel too.

Until recently, NOAA was permitted to provide light refreshments at conferences when at least 50 percent of federal attendees were in travel status based upon the GSA Travel Regulation. However, the Comptroller General decision B-288266, January 27, 2003, ruled that GSA does not have the authority to allow agencies to use appropriated funds for light refreshments for employees who are not in travel status. See GSA Travel Advisory #7, January 30, 2003, about the change in policy resulting from the decision of the General Accounting Office (GAO).

In summary, travel regulations within the authority given GSA by statute govern use of appropriated funds for food expense of personnel who are in travel status, and the GAO decisions govern the application of the laws on use of appropriated funds for food expense of personnel who are not in travel status.

2. At or Near Official Duty Station

As a general appropriations rule, appropriated funds are not available to pay subsistence or to provide free food to Government employees at their official duty stations. If the meeting is at or near the normal duty stations of some or all attendees, this presents problems for NOAA if food is provided for those attendees. Because food is deemed a personal expense, there is the potential violation of 5 U.S.C. § 5536. This statute prohibits an employee from receiving additional compensation in addition to the pay and allowances fixed by law. General exceptions are programs under the Training Act and the Incentive Awards Act. Other exceptions may arise from specific statute or particular circumstances of a situation.

Although businesses and other organizations frequently provide refreshments at business meetings, facility tours, recruitment meetings,

sales promotion events, and similar activities, the practices of private sector businesses do not apply to the Government even when the purpose of the meeting, conference, or open house, for examples, is to carry out functions of the Government. Therefore, providing a meal or coffee, tea, or other light refreshments for either staff, including visitors from other Government agencies, or the general public cannot be a cost to a federal appropriation, unless a statute specifically provides funds for that purpose. The general public includes representatives from businesses or other organizations, i.e., anyone who is not a federal employee. Other sources of funds such as gifts and bequests can be used in certain circumstances, but these will not be discussed here, and questions on their use should be referred to the General Law Division, Department of Commerce.

3. While in Training

One of the two major exceptions to providing food is for training meeting the definition in the Training Act. Interpreting authorities granted agencies under the Government Employees Training Act, in particular 5 U.S.C. § 4110, the GAO has allowed use of appropriated funds to purchase food as part of training expenses where the providing of meals is necessary to achieve the objectives of the training program.

Business meetings of an internal nature are not training. Calling a meeting training does not make it training. Even when the meeting is a working session that involves a working lunch with a speaker or instructor from outside the unit addressing the topic of the meeting, it does not fit within the definition in most cases.

The training must fulfill the definition in the Act: “the process of providing for and making available to an employee...a planned, prepared, and coordinated program, course, curriculum, subject, system, or routine of instruction or education...which will improve individual and organization performance and assist in achieving the agency’s mission and performance goals.”

Because of the greater authority provided in the Training Act, agencies have been able to pay for food in connection with attendance at conferences on official agency business. If the cost of food is part of registration costs for meetings sponsored by non-government organizations and is not separately broken out, by approving the need for attendance, the Government may pay the full fee. If the meals are separately stated, the Government may pay for the meals if there is an administrative determination showing that (1) the meals are incidental to the meeting, (2) attendance of the employee at the meals is necessary to full participation in the business of the conference, and (3) the employee is not free to take the meals elsewhere without being absent from essential

formal discussions, lectures, or speeches concerning the purpose of the conference (B-160579, April 26, 1978, B-166560, February 3, 1970). Documentation of the determinations by the approving official will be part of the approval package. If the purchase card is used, a copy of the determinations and related documentation shall be included in the purchase card file.

4. Conferences

The GAO has determined that providing meals at a Government-sponsored conference for federal workers not in travel status requires the determination that "a meal must be part of a formal meeting or conference that includes not only functions such as speeches or business carried out during a seating at a meal but also includes substantial functions that take place separate from the meal (64 Comp. Gen. 406 (1965))." If this is the case, further administrative determinations are needed that "(1) the meals were incidental to the meeting, (2) attendance at the meals was necessary for full participation at the meeting, and (3) the employees would miss essential formal discussions, lectures, or speeches concerning the purpose of the meeting if they took their meals elsewhere" (B-198471, May 1, 1980). If the purchase card is used, a copy of the approved determinations and related documentation shall be included in the purchase card file. For purchase orders and contracts, provide the determinations to the contracting officer.

In these conferences where meals are furnished or are part of the registration fee, the Government is directed by the Federal Travel Regulation, § 301-74.21, to make appropriate deductions from the traveler's meal and incidental expense. However, GSA does not require deductions for light refreshments.

5. Awards Ceremonies

The other major general exception is award ceremonies covered by the Incentive Awards Act. These ceremonies, if they are solely for honorary recognition of individuals, can have the cost of modest refreshments provided from appropriations. The approval of refreshments as part of the award presentation will be at the level at which awards were approved and are to be presented. In accordance with Appendix A, NAO 202-451, NOAA Incentive Awards Program, in general, the presentation level will be at the level at which awards were approved. Regardless of the level of the presentation ceremony, providing the refreshments must be determined to be beneficial to the purpose of the ceremony of honorary recognition of individuals. However, if the ceremony is combined with another event in which food or refreshments cannot be provided using appropriated funds, such as a retirement or a holiday party, the food or refreshment expense

may not be paid from appropriated funds. If the purchase card is used, a copy of the approved determinations and related documentation for the purchase of food or refreshments shall be included in the purchase card file. For purchase orders and contracts, the determinations are to be provided in the requisition package sent to the contracting officer.

6. Other Situations

Particular circumstances of a situation may justify use of appropriations for food. However, these allowances are few and are narrowly construed in GAO decisions. For example, if the conditions are unusual, such as imminent threat to human life or destruction of federal property, NOAA may be able to justify the need for food for federal workers when they are at or near their duty station. In other circumstances, such as snowstorms, the Government usually may not pay for the food for federal workers at their duty stations. One exception allowed involved a snowstorm when there was determined to be imminent danger to human life (B-189003, July 5, 1977). The Government cannot pay for food regardless that food is available only at excessive prices (B-194798, January 23, 1980, and B-202104, July 2, 1981). Employees are expected to pay for the food themselves.

In particular circumstances, where the officials believe a necessary connection exists between the need to incur the food expense and the function of the agency, they should refer, in advance, to the Bureau Procurement Official (Helen Hurcombe), the Purchase Card Agency Program Coordinator (APC) for use of a purchase card (Larry Frazier in the Headquarter's Acquisition Offices, or to the cognizant head of contracting office in the NOAA Administrative Support Centers). Opinions can be requested from the General Law Division, Department of Commerce, with notification to one of the officials about the request.

7. Review of Food Purchases

Questions may be raised by anyone in the approval or payment process or by oversight reviews on situations where food is purchased. These may be referred to the General Law Division or to the Office of the Inspector General for resolution. In some cases, matters are referred to the Comptroller General for review and decision. If any review made after a cost for food is incurred determines that it was inappropriate for the Government to provide the food, the person making the expenditure, such as a cardholder under the purchase card, is required to reimburse the Government.